

Order

Michigan Supreme Court
Lansing, Michigan

August 11, 2014

Robert P. Young, Jr.,
Chief Justice

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

149561 (19)

ROBERT HEXIMER,

Plaintiff-Appellant,

v

SC: 149561
COA: 321601

CHIPPEWA CORRECTIONAL FACILITY WARDEN,

Defendant-Appellee.

On order of the Chief Justice, the motion for reconsideration is DENIED. The holding in *Smith v Bennett*, 365 US 708, 710 (1961), was based in part on the U.S. Supreme Court's earlier decision in *Burns v Ohio*, 360 US 252, 253 (1959), which held that a state cannot “constitutionally require that an indigent defendant in a criminal case pay a filing fee before permitting him to file a motion for leave to appeal in one of its courts.” [Emphasis added.] Although *Smith v Bennett* precludes a court from refusing to docket and decide a habeas corpus action because of the inability to pay the filing fee, nothing in the decision mandates that there be a complete waiver of court fees. Accordingly, the Clerk shall retain plaintiff’s pleadings for an additional 21 days to allow plaintiff to comply with the Court’s July 21, 2014 order.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

August 11, 2014


Clerk